

CHARLES COUNTY GOVERNMENT

CONCEPT PAPER (Revised) SMALL LOCAL BUSINESS ENTERPRISE (SLBE) PROGRAM 02/02/2012

Deletions are lined through & revisions/additions underlined & highlighted.

A. Charles County SLBE Participation 'Small Business' Requirements:

1. Each firm must be certified in the State of Maryland Small Business Reserve (SBRP) Program, maintain that certification, and comply with all provisions of the State Program, including annual re-certification. The Charles County Small Local Business Enterprise Program (SLBE) will utilize the State SBRP qualifying criteria:
 - a. Must be independently owned and operated
 - b. May not be a subsidiary
 - c. Does not dominate its field of operation
 - d. Firm's annual average gross sales in its most recently completed three years may not exceed the maximum permitted:

i. Wholesale operations:	\$4 million
ii. Retail operations:	\$3 million
iii. Manufacturing operations:	\$2 million
iv. Service operations:	\$4 million
v. Construction operations:	\$7 million
vi. Architect/engineering services:	\$4.5 million
 - e. May not exceed the maximum number of employees permitted:

i. Wholesale operations:	25 persons
ii. Retail operations:	25 persons
iii. Manufacturing operations:	100 persons
iv. Service operations:	100 persons
v. Construction operations:	50 persons
vi. Architect/engineering services:	100 persons
2. An SLBE firm must be certified in the State Program, and meet all additional County Program requirements at the time of the submission of a bid or proposal, in order to be eligible for any SLBE preference in the respective procurement.
3. The County will plainly advertise in its solicitations the necessity to meet the State SBRP certification requirement, any County requirements, and how to access the State & County criteria. Links/URLs and information for bidders will be published in all solicitations subject to the SLBE Program.
4. Compliance with the Maryland Program certification criteria is monitored and enforced by the State.

B. Charles County SLBE Participation 'Local Business' Requirements:

1. Principal place of business must be in Charles County; or
2. Company has a significant employment presence in Charles County with 25% or greater of its employees domiciled in Charles County; or
3. Company has a branch or satellite office in the County which accounts for 25% or greater of business gross sales.
4. An SLBE will "graduate" from the Program and will be no longer eligible for SLBE preference when:
 - a. It has received more than \$3 million in awards within any 60 month period, based upon their SLBE status.
 - OR
 - b. It exceeds the maximum annual gross sales or maximum number of employees specified in Section A., above.

C. General Principles:

1. The Program is race and gender neutral.
2. The current MBE program is retained. The SLBE Program will contain tangible preferences that could actually result in award to MBEs. Hence, there is a possibility to increase our minority business participation.
3. The County Program is based upon the experience and tested provisions of existing Maryland programs (State of Maryland, Montgomery County, Washington Suburban Sanitary Commission), however it does not mirror any existing program entirely.
4. Charles County Departments will work in conjunction with Purchasing to meet SLBE goals (when established) associated with formal solicitations. However, Departments will also be responsible for meeting SLBE goals within small procurement conducted by the Department.
5. In determining the SLBE percentage achieved, the value of SLBE provided goods and services shall be counted, even if procured via apart from any SLBE reserve.
6. Additional Program elements and features may be phased-in as needs and opportunities are identified.

D. Proposed SLBE Reserve Preferences: Unless otherwise noted, the following applies to procurement of commodities, services, and construction. The term “prime contractor” means a person or business entity having a contract with Charles County Government. The term “sub-contractor” means a person or business entity having a contract with a prime contractor, in order to execute a portion of the prime contractor’s contract with CCG.

~~1. All Procurement up to \$50,000:~~

- ~~a. All contracts \$50,000 and less are reserved for registered local small businesses, provided there are at least 3 qualified SLBE firms.~~
- ~~b. All procurement opportunities from \$5,000 to \$50,000 are advertised on the County's bid board as reserved for small local businesses. If under \$25,000, the process is deemed to be informal, and informal quotes are obtained, in accordance with County purchasing regulations.~~
- ~~c. If fewer than three bids/quotes are received, or if the lowest SLBE bid/quote received is deemed to be 10% or more above the, lowest non-SLBE bidder’s bid, then the commodity/service may be procured from a non-SLBE firm.~~

1. All Procurement not subject to formal solicitation (Currently up to \$25,000):

- a. All procurement is reserved for registered SLBEs, provided there are at least 3 qualified SLBE firms.**
- b. If fewer than three bids/quotes are received, or if the lowest SLBE bid/quote received is deemed to be 10% or more above the, lowest non-SLBE bidder’s bid, then the commodity/service may be procured from a non-SLBE firm.**

~~2. Non-Construction Contracts Greater Than \$50,000 (No limit on contract amount):~~

2. Non-Construction Contracts obtained by formal solicitation (Currently procurement over \$25,000) [Maximum initial contract award not to exceed \$500,000]:

- a. Invitations To Bid – Prime Contractor: A price preference for a registered SLBE of 5% greater than the lowest responsive and responsible non-SLBE bid if the SLBE is a prime contractor.
- b. Invitations To Bid – Joint Venture or Sub-Contractor: If an SLBE is part of a joint venture or utilized as a sub-contractor, up to 5% price preference may be awarded based upon only the value of the commodities or services to be provided by the SLBE, not the total contract amount.
- ~~c. Requests For Proposals – Prime Contractor: A ten-point preference (Out of a possible 100 point evaluation) for an SLBE as a prime contractor.~~

c. Requests For Proposals – Prime Contractor: A ten-point preference (Out of a possible 100 point technical proposal evaluation) for an SLBE as a prime contractor.

~~d. Requests For Proposals – Joint Venture or Sub-Contractor: Up to 5 preference points may be awarded to a prime contractor if a SLBE sub-contractor/joint venture partner will provide 35% or more of the contract. The number of preference points for less than 35% SLBE participation will be pro-rated.~~

d. Requests For Proposals – Joint Venture or Sub-Contractor: If an SLBE is part of a joint venture or utilized as a sub-contractor, up to 10 preference points may be awarded. The number of points awarded will be prorated, based upon the percentage of the value of commodities or services to be provided by the SLBE.

~~3. Construction Contracts Greater Than \$50,000 (Maximum contract value \$500,000):~~

3. Construction Contracts obtained by formal solicitation (Currently procurement over \$25,000) [Maximum initial contract award not to exceed \$500,000]

a. Invitations To Bid – Prime Contractor: A price preference for a registered SLBE of 5% greater than the lowest responsive and responsible non-SLBE bid if the SLBE is a prime contractor.

b. Invitations To Bid – Joint Venture or Sub-Contractor: If an SLBE is part of a joint venture or utilized as a sub-contractor, up to 5% price preference may be awarded based upon only the value of the commodities or services to be provided by the SLBE, not the total contract amount.

~~c. Requests For Proposals – Prime Contractor: A ten-point preference (Out of a possible 100 point evaluation) for an SLBE as a prime.~~

c. Requests For Proposals – Prime Contractor: A ten-point preference (Out of a possible 100 point technical proposal evaluation) for an SLBE as a prime contractor.

d. Requests For Proposals – Joint Venture or Sub-Contractor: If an SLBE is part of a joint venture or utilized as a sub-contractor, up to 10 preference points may be awarded. The number of points awarded will be prorated, based upon the percentage of the value of commodities or services to be provided by the SLBE.

~~4. When several distinct services are proposed under one contract (e.g., Task order contract with several A/E related disciplines), two or more contracts may issued by Purchasing to encourage SLBE competitiveness as a prime contractor, if such multiple contracts are compatible with the needs of the CCG Department requesting the contract(s), and not contrary to the best interests of the County.~~

4. When several distinct services and/or commodities are required for a procurement project (e.g., Task order contract with several A/E related disciplines), the project may be broken into multiple elements to encourage SLBE competitiveness as prime contractors, if such multiple contracts are compatible with the needs of the CCG Department requesting the contract(s), and not contrary to the best interests of the County.

E. Exemptions from Eligible Procurement Dollars when Calculating Percentage Criteria:

1. Any single procurement over ~~\$3 million~~ \$500,000
2. Contracts which would conflict with a state or federal law or grant requirement
3. Pre-existing contracts or extensions of pre-existing contracts
4. Sole-source and piggyback contracts
5. Intergovernmental agreements, sole source, and emergency procurement, and memorandums of understanding/agreement.
6. Joint/cooperative procurement conducted with other jurisdictions.
7. Any procurement for which there are not at least 3 local SLBEs qualified or able to perform the contract.
8. Contracts granted a waiver by the President of the Charles County Commissioners

F. Potential Additional Future Program Elements: Sufficient history and experience with the Program will be necessary in order to determine if, and to what scope, the following could be implemented.

1. Some construction projects designated as set-aside for SLBEs only.
2. Requirement for some level of mandatory use of SLBEs as sub-contractors, if a sufficient field of registered SLBEs exists.

G. Possible Minority Business Enterprise ‘Kicker’*

~~Establishment of additional 5 incentive points if an SLBE prime contractor will use a local MBE sub-contractor(s) to provide at least 35% of the contract. The number of preference points for less than 35% MBE participation would be prorated.~~

~~**This proposal has been submitted to the County Attorney and is under review.*~~

H. Legal Considerations:

1. As to federal courts, a "rational basis" test would be applied to an economic program which does not make a distinction based on race, ethnic origin or gender. The preferences provided within the SLBE Program should show a "rational" relationship to a valid stated purpose and intent. "Strict scrutiny" is applied to race and ethnic based programs; "intermediate scrutiny" for gender and age distinctions.
2. Federal courts have recognized in several cases that local government has a legitimate interest in encouraging businesses to remain and locate in the jurisdiction, and that small/local business preference programs increase the tax base and help the economy.
3. Maryland courts do not have appear to have squarely addressed local vendor preference purchasing programs (Reference: Montgomery County Attorney's Office, 2005) . The Maryland Court of Appeals has found local regulations invalid that discriminate against non-resident persons or entities, but these cases involved the local government acting in the role of "economic regulator" rather than a "market participant". It is anticipated that the proposed CCG Program would place the County in the role of a market participant. It is also interesting to note that it would not establish or infer a monopoly of profitable businesses.
4. The Maryland General Assembly passed legislation requiring the adoption of a SLBE program for the Washington Suburban Sanitary Commission (WSSC) with a requirement that the program be limited to firms having their principal place of business in Prince George's or Montgomery Counties, or that 25% of the employees of the business be domiciled in either of these counties. The stated purpose of the program, contained in the Public Utilities Article of the Annotated Code, Title 20, Subtitle 3, Section 20-303, is to assist small businesses in Montgomery and Prince George's counties by "establishing a sheltered market or other appropriate preference".